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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of ) EB Docket No. 07-13  
)  
**DAVID L. TITUS** ) FRN No. 0002074797  
) File No. EB-06-IH-5048  
Amateur Radio Operator and Licensee of )  
Amateur Radio Station KB7ILD )

To: Richard L. Sippel  
Chief Administrative Law Judge

**Enforcement Bureau's Reply  
To  
David L. Titus's Proposed Findings of Fact And Conclusions of Law**

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## Summary

It is undisputed that Mr. Titus is a felony sex offender and is considered by the Seattle Police department to present a high risk to re-offend. In his Proposed Findings and Conclusions of Law, Mr. Titus argues that: (1) he has only one, old felony sex offense conviction; (2) his risk of “grooming” children through the access afforded him as a ham radio licensee is speculative; (3) his felony sex offense conviction did not involve violence; (4) he has been rehabilitated; and (5) his designation as a Level III sex offender is arbitrary and his reassessment was done without good reason.

The Bureau submits that Mr. Titus’s arguments lack merit. Mr. Titus would have the Commission conclude that his record consists of a single non-violent felony conviction. But Washington State law states that an “adjudication” is identical to a “conviction” and the two terms may be used interchangeably. There have been additional “adjudications” and so there have been additional “convictions.” And most of them have involved violence. In addition, Mr. Titus poses a continuing risk to children. His adult felony conviction demonstrates his propensity to abuse positions of trust, then as a gymnasium employee, to groom a child for sex. Mr. Titus’s presence on the amateur radio airways as a ham and repeater operator gives him unfettered access to young ham operators in situations which promote his grooming of these children. Furthermore, Mr. Titus was convicted of felony sex offenses three times and received “Manifest Injustice” sentences—sentences above the normal range-- because of the egregious nature of his felony convictions and the violence underlying almost all of them. Recent police reports and his testimony indicate that his violent tendencies are not under control and that he does not choose to cooperate with authority. The police reports and Mr. Titus’s admissions

regarding the events described therein undermine Mr. Titus's claim that he has been rehabilitated.

Mr. Titus's attempt to minimize the testimony of Detective Shilling, a recognized expert in the field of sex offenders, must be rejected. In reaching his conclusions, Detective Shilling used the many years of experience he has acquired managing sex offenders, and considered the totality of the circumstances, including Mr. Titus's criminal and treatment histories, and an actuarial model that is at least moderately accurate in predicting felony sex recidivism. Further, Dr. Allmon, Mr. Titus's witness, agreed with Detective Shilling that Mr. Titus should avoid situations where children are likely to be present.

Mr. Titus has repeatedly failed to comply with the directives of those in authority, be they prison officials, counselors/psychologists, or the police. He admits intentionally lying to prison staff and the police. His inconsistent and self-serving testimony during the hearing indicates a failure to be completely truthful and candid.

Mr. Titus's continued licensing as an amateur radio operator and his role as a repeater operator present unreasonable risks to children in the amateur radio community. That continuing risk should not be sanctioned by the Commission and, therefore, his license should be revoked.

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## **I. Introduction**

1. The Enforcement Bureau, pursuant to the Presiding Judge's Order, FCC 08M-55 (released December 17, 2008) and FCC 09M-29 (released March 23, 2009), hereby submits its reply to the Proposed Findings of Fact and Conclusions of Law submitted by David L. Titus on February 27, 2009. For the reasons detailed in the Enforcement Bureau's Proposed Finding of Fact and Conclusions of Law and those detailed below, the Bureau urges the Presiding Judge to balance Mr. Titus's interest in continuing his hobby as an amateur radio operator against the public interest in protecting children from a Level III sexual predator. Because the potential for harm to children in this case is so serious, it is clear that the Presiding Judge should revoke Mr. Titus's amateur license.

## **II. Arguments**

### **A. Mr. Titus's Felony "Adjudications" Are Convictions**

2. The first designated issue of the current action, as set forth in the *David L. Titus*, Order to Show Cause, EB Dkt. 07-13, 22 FCC Rcd 1638, 1640 (Enf. Bur. 2007), is "to determine the effect of David L. Titus' felony *conviction(s)* on his qualifications to be and to remain a Commission licensee." (Emphasis added) Despite this clear indication that Mr. Titus's felony convictions are the proper subject of this hearing, Mr. Titus asserts that only his most recent conviction is relevant to an assessment of character under the policy statement. (Titus Proposed Findings ¶ 2, Titus Proposed Conclusions ¶ 16) This attempt to minimize his string of felony sex offenses should be rejected.

3. The 1990 Policy Statement Regarding Character Qualifications in

Broadcast Licensing states:

“...evidence of any conviction for misconduct constituting a felony will be relevant to our evaluation of an applicant's or licensee's character. Because all felonies are serious crimes, any conviction provides an indication of an applicant's or licensee's propensity to obey the law.”<sup>1</sup>

It is bedrock Commission policy that all felony convictions are relevant in evaluating a licensee's character. Mr. Titus's criminal record includes two felony adjudications as a minor,<sup>2</sup> as well as a felony conviction as an adult. (EB Ex. 4, pp. 3-22) Mr. Titus attempts to have the Commission disregard his juvenile felony adjudications and only consider his adult felony conviction without any authority for this proposition. (Titus Summary p. ii, Titus Proposed Conclusions ¶ 16) According to the Juvenile Courts and Juvenile Offenders section of the Washington State Code, “adjudication” has the same meaning as “conviction” in RCW 9.94A.030, and the terms must be “construed identically and used interchangeably.”<sup>3</sup> Since the terms as defined in the jurisdiction

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<sup>1</sup> See *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, Policy Statement and Order, 5 FCC Rcd 3252 (1990), *recon. on other grounds*, 6 FCC Rcd 3448 (1991), *modified on other grounds*, 7 FCC Rcd 6564 (1992).

<sup>2</sup> In addition to his two adjudications as a juvenile (EB Ex. 4, p. 14) Mr. Titus entered plea agreements on two charges, one a violent assault and another a sexual assault, in which he either paid a fine or agreed to counseling in exchange for dismissal of the charge. (EB Ex. 4, pp. 15, 17; Tr. 518-20) Mr. Titus also admitted committing a second felony sexual assault as a juvenile against one of his prior victims, but the second assault charge was dismissed because the victim was unable to testify. (EB Ex.4, p.14; Tr. 536-38) Mr. Titus's criminal record thus documents 5 violent and/or sexual assaults as a juvenile in addition to his adult felony conviction. (EB Ex. 4, pp. 15, 17; Tr. 518-20, 524-25, 536-38 )

<sup>3</sup> See RCWA Section 13.04.011

where they were imposed are construed identically, the Commission obviously must consider all three of Mr. Titus's felony convictions in order to satisfy the direction in the Order to Show Cause.

**B. Mr. Titus's Risk To Children Is Not Speculative**

4. Mr. Titus maintains that his risk of "grooming" children through the access afforded him as a ham radio licensee is purely speculative. (Titus Proposed Conclusions ¶ 22). This argument lacks merit.

5. "Grooming" is a term used to describe the actions taken by sex offenders in order to gain the trust of potential victims. (Tr. 913-14, 1029) Mr. Titus demonstrated predatory "grooming" during his interactions with an 11-year-old boy at a gym. (EB Ex. 4, pp. 11-14; Tr. 547-51) Those actions led to his conviction as an adult for Communication With a Minor For Immoral Purposes. (EB Ex. 4, pp. 5-10; Tr. 554-55) Mr. Titus first initiated friendly contact with the minor (EB Ex. 4, pp. 3-4; Tr. 547-51) and then, over time, gradually increased the sexual talk and sexual behaviors between him and the victim. (EB Ex. 4, p. 12; Tr. 547-51) His interest in and interactions with the boy were overtly sexual (Tr. 547-51; EB Ex. 4, pp. 12) and continued even after the boy stopped coming to the gym, as evidenced by his call to the boy's home to urge him to return to the gym. (EB Ex. 4, pp. 4, 12-13)

6. Amateur radio's activities, including a tradition of experienced amateurs mentoring younger amateurs, give ham radio operators easy access to minors and, in Mr. Titus's case, facilitate grooming scenarios. (Tr. 410-11, 483-84, 486, 508 ) Mr. Titus's written testimony states that he "has mentored new-comers to the ranks of amateur radio." (Titus Ex. 1, p. 10) Because Mr. Titus operates and almost constantly monitors a

repeater that has wide coverage in the Seattle area (Tr. 475), he has particularly easy access to the conversations of minor ham operators who use his repeater. (Tr. 418-21, 442-43; EB Exs. 1, 2) As in *George E. Rodgers*, Hearing Designation Order, 10 FCC Rcd 3978 (WTB 1995) (“*Rodgers*”) which was cited in the *Order to Show Cause* in this proceeding,<sup>4</sup> through ham radio Mr. Titus has the means and methods to attract minors through their common interest in amateur radio. ( *See George E. Rodgers*, 10 FCC Rcd at 3978 ) This poses a risk to Seattle area youth.

7. The *Rodgers* case is critical to assessing the risk presented in the instant case. It involved a child molester who used amateur radio in the same way Mr. Titus used his position at the gymnasium where he worked to engage an unsuspecting youngster in sexual talk and activities. (EB Ex. 4, pp. 12-13) Mr. Titus, in his proposed findings, simply ignores the *Rodgers* case. As discussed in the Bureau’s Proposed Findings of Fact and Conclusions of Law, in *Rodgers* the Wireless Telecommunications Bureau designated the license renewal application of Mr. Rodgers, an amateur radio operator, for an evidentiary hearing on the basis of his conviction in Pennsylvania of corruption of minors and indecent assault. Mr. Rodgers “attracted his victims through a common interest in amateur radio and that each victim was assaulted while spending a night at Mr. Rodger’s home to use his amateur radio apparatus.” 10 FCC Rcd at 3978. The hearing designation order states that “[c]ertainly, [Rodger’s] conviction for corrupting and indecently assaulting minors attracted through amateur radio is relevant” to his qualifications to be a Commission licensee. *Id.*<sup>5</sup>

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<sup>4</sup> *See Order to Show Cause*, 22 FCC Rcd at 1639.

<sup>5</sup> Mr. Rodgers renewal application was dismissed after he failed to enter an appearance in the hearing proceeding. *George E. Rodgers*, Order, FCC 94M-121 (ALJ Gonzales 1995).

8. The conduct in which Mr. Rodgers engaged -- “grooming” unsuspecting children through their activities in amateur radio and then sexually assaulting them -- raises the same, profoundly disturbing concerns that Seattle Police Detective Robert Shilling, the officials of Lake Washington Ham Club, and Bureau have expressed concerning Mr. Titus. The risks that Mr. Titus poses cannot and should not be understated. That Mr. Titus used his position of trust to groom an 11-year-old boy (Titus Proposed Findings ¶ 56, EB Ex. 4, pp. 12-13), coupled with his admission that he mentors new hams (Titus Proposed Findings, ¶66, Titus Ex. 1, p.10), justifies this concern. His testimony and that of his character witnesses establishes that ham activities he attends afford access to children. (Titus Proposed Findings ¶ 75; Tr. 657-58, 660, Titus Ex. 3, p. 2)

9. Although Mr. Titus attempts to distinguish *Contemporary Media*<sup>6</sup> by claiming his sole conviction was not violent, the holding in that case is clearly applicable here. First, Mr. Titus does have several violent convictions. Furthermore, even though the crime for which Mr. Titus was last convicted entailed “grooming” a child for sex as opposed to a violent sexual assault, it is the risk of recidivism of this very behavior that the Commission seeks to avoid by revoking his license.<sup>7</sup>

10. The Commission should not license an individual to engage in an activity that places him in proximity to innocent children when that individual has (a) a history of multiple felony sexual assaults on youngsters; and (b) has demonstrated a recent pattern

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<sup>6</sup> *Contemporary Media*, 214 F.3d 187, 193 (2000) cert. denied 532 U.S. 920 (2001)(“*Contemporary Media*”)

<sup>7</sup> The United States Court of Appeals in *Contemporary Media* upheld the FCC’s revocation of a license for sex offenses against children. *Contemporary Media*, 214 F.3d at 193 Mr. Titus’s record contains multiple convictions for sexual assaults for which he received Manifest Injustice sentences. (EB 4, pp. 14, 17; Tr. 727-28)

of erratic and aggressive behavior. Dr. Allmon, Mr. Titus's psychologist, testified that it would not be prudent for Mr. Titus to work in a day care center. (Tr.999-1000) He likened doing so to an alcoholic drinking soda in a tavern. (Tr. 996 ) Similarly, Detective Robert Shilling testified that Mr. Titus should not participate in any club whose members included children and whose membership had a similar interest. (Tr. 923) The hobby of amateur radio is essentially a club that includes children. And in this club members can chat at any time without their identities being immediately ascertainable. (Tr. 923-24) Obviously that situation poses a risk to children.

11. It is uncontested that amateur radio is attractive to children. For example, John Schurman and David Titus first received their respective amateurs licenses while teenagers. (Tr. 404, 507) Moreover, the records of the American Radio Relay League (an organization of amateur radio enthusiasts commonly referred to as the "ARRL") and the Boy Scouts of America reflect widespread and longstanding youth involvement in the hobby of amateur radio. (EB. Ex. 9, EB Ex. 10, EB Ex. 12, EB Ex. 13) It is also undeniable that many children in Mr. Titus's area will be exposed to him because of the activities he conducts as a Commission licensee. The Lake Washington Ham Club has a very active and sizable contingent of young members -- including many fifth and sixth graders -- who operate in the same vicinity as Mr. Titus. (EB. Ex. 6, pp. 1-2)

12. Children are also at heightened risk because of Mr. Titus's failure to get appropriate sex offender treatment on an ongoing basis. At trial, Dr. Allmon testified that the national average recidivism rate shows that approximately 12 percent of sex offenders re-offend if they do not receive sex offender treatment, and that the re-offense rate is reduced to approximately five percent for those who maintain treatment. (Tr. 967-68)

From Mr. Titus's own evidence, it is clear that he has failed to maintain consistent treatment. (Tr. 597-98) His treatment records indicate that he received approximately three years of treatment while incarcerated and while on probation. (Titus Ex. 2, p. 2) Mr. Titus was uncooperative throughout much of his treatment regime. (EB Ex. 4, pp. 32-34; Titus Ex. 1, p. 5) Mr. Titus has not had any type of sexual offender treatment since his release from prison and supervision in the early to mid-90s. (Tr. 597-98) These facts, coupled with Dr. Allmon's information on recidivism rates, show that Mr. Titus poses a significant risk to re-offend.

13. Mr. Titus not-so-subtly suggests that the Enforcement Bureau has targeted him in this hearing simply because he is gay (Titus Proposed Findings, ¶ 4).<sup>8</sup> The Presiding Judge should view Mr. Titus's baseless claim for what it is – a desperate effort to divert attention from the Enforcement Bureau's very real concern that, based on his string of convictions, his more recent erratic behavior, and his official status as a Level III sex offender, he poses a serious risk to children in amateur radio.<sup>9</sup>

### **C. Mr. Titus's Crimes Involve Violence**

14. Although Mr. Titus contends that his sole *adult* conviction was not violent (Titus Proposed Findings, p. ii; ¶ 2, Titus Proposed Conclusions ¶ 16), he has a long

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<sup>8</sup> The Bureau is offended by the implicit suggestion that its motive for prosecuting this case is anything other than its legitimate desire to enforce the Commission's rules and protect the interests of children who are involved in amateur radio.

<sup>9</sup> Contrary to Mr. Titus's contention, his lack of a recent criminal conviction should not be considered compelling proof that he is rehabilitated. (See Titus Proposed Findings, ¶ 18) Pedophilic sex crimes are, by their nature, secretive. ( See EB Ex. 4, p. 44 ) Mr. Titus admits to other instances of molesting children that did not result in convictions (EB Ex. 4, pp. 14, 17; Tr. 517-20, ) and during both the Halligan and Mercer Island incidents he exhibited "offense cycle" behaviors. ( EB Ex. 4, p. 25, 35-37, 39-40; Tr. 593-94, 607-08, 611-12)

history of well-documented violent behavior that includes multiple juvenile assaults, fights while incarcerated, and his 2004 confrontation with Victoria Halligan. (EB Ex. 4, pp. 35-37; Tr. 593-94) Because the trial courts considered Mr. Titus's convictions to be particularly egregious or violent, Mr. Titus was consistently sentenced to Manifest Injustice, an exceptional sentence that goes beyond the standard sentencing range and imposes the maximum sentence possible. (Tr. 727-28; EB Ex. 4, pp. 14-17) Episodes demonstrating the exercise of power and control have historically accompanied Titus's sexual offender behavior and thus have been determined to be a part of his "offense cycle." (EB Ex. 4, pp. 25-26, 35-37; EB Ex. 2, p. 7-9; Tr. 924) His conduct also demonstrates that he wants people to think that he is a police officer. This is a manifestation of this desire for power and control. (EB Ex. 4, p. 19, 35-37; Tr. 609-14) Mr. Titus's risk of re-offending increases when he exhibits cyclic behaviors such as "physical aggression" and "verbal assaultiveness." (EB Ex. 4, p.25)

15. Mr. Titus's confrontational and violent behavior towards Ms. Halligan is, thus, relevant and significant because it demonstrates his continuing "offense cycle" conduct. (Tr. 924; EB Ex. 2, p. 7) In that 2004 incident, Mr. Titus admits grabbing and twisting Ms. Halligan's arm even though she had not touched him. (Tr. 593; EB Ex. 4, p. 35) The police identified the hold that Mr. Titus used on Ms. Halligan as being one commonly used by police to restrain suspects. (EB Ex. 4, p. 35) Ms. Halligan was so intimidated and fearful for her safety as a result of Mr. Titus's demeanor and attack that, in order to get away from him, she left the scene of the accident without exchanging insurance information or calling the police to report the accident. (EB Ex. 4, p. 37) Only after reaching the safety of her home did she contact the police to report the accident and

the assault by Mr. Titus. (EB Ex. 4 p. 37) Mr. Titus's behavior led Ms. Halligan to believe that he was an out-of-control police officer. (EB Ex. 4 p. 36-37; Tr. 593, 611-12) When she asked him whether he was a law enforcement officer, Mr. Titus refused to answer her question. (Tr. 611-12; Ex. 4 p. 37)

16. Mr. Titus's attack on Ms. Halligan should be viewed in conjunction with his suspect and uncooperative behavior during the 2006 Mercer Island incident. (EB Ex. 4, pp. 36-40) Both incidents present evidence that Mr. Titus was holding himself out to be a law enforcement officer. (Tr. 611-12, 855-57; EB Ex.4. pp. 35-40) That is significant and relevant because it is an example of a behavior identified with Mr. Titus's "offense cycle." (EB Ex. 4 pp. 25-26) Sex offenders like Mr. Titus often exert power, authority and intimidation over their victims. (Tr. 855-857)

17. The Mercer Island incident, while it involved non-violent conduct, raises serious concerns because it also involved "offense cycle" behavior. The Mercer Island Police officers who found Mr. Titus alone in a dark park restroom at 3 a.m. had similar concerns when they discovered that he was wearing a Sheriff's badge necklace and carried in his truck items typically used by law enforcement. (Tr. 607-08; Ex. 4 pp. 39-40) When the officers questioned Mr. Titus he was, again, uncooperative. (EB Ex. 4, p. 39-40; Tr. 602, 605, 608) Although he claimed to have been with his 19-year-old lover immediately prior to being discovered in the restroom, he refused to identify that lover, so the police had no way to confirm that he was an adult. (EB Ex. 4, pp.39-40; Tr. 602, 605) While Mr. Titus claims that his sexual orientation is now only toward adult males

(Tr. 673-74), he admits that he is still attracted to some minors and that he does not always know with certainty the age of his sex partners. (Tr. 650-53)<sup>10</sup>

18. In these recent incidents, Mr. Titus exhibited erratic “offense cycle” behaviors which demonstrate his continuing disrespect for authority; his desire for power, control and secrecy; a willingness to lie when under pressure; and his violent tendencies. While these character traits are unacceptable in any licensee, they are of particular importance when that licensee has a history of violent sex crimes and has the access to children that ham radio provides.

19. Mr. Titus attempts to distinguish his situation from that in *Contemporary Media* by stating that his conduct did not involve violent sexual assaults. (Titus Proposed Conclusions ¶ 16) But Mr. Titus’s record of multiple convictions for sexual assaults for which he received Manifest Injustice sentences belies his argument. (EB Ex. 4, pp. 14, 17; Tr. 727-28) “It is hardly irrational to conclude that if an individual is unwilling to obey the law with respect to such patently criminal behavior as sexual assault on children, he will be equally unwilling to obey FCC rules that require openness and honesty with the Commission.” *Contemporary Media*, 214 F.3d at 193 (upholding the FCC’s revocation of an amateur license for sex offenses against children) While Mr. Titus’s latest conviction did not include a violent sexual assault, it evokes particular concern because it demonstrates the approach Mr. Titus would likely use to “groom” his victims.

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<sup>10</sup> See also Dr. Allmon’s testimony at Tr. 1029-30.

**D. Mr. Titus Cannot be Relied Upon To Deal Truthfully with The Commission**

20. Mr. Titus, in his Proposed Findings of Fact and Conclusions of Law, fails to acknowledge the full extent and serious nature of his criminal behavior and tries to rationalize his when-convenient memory loss (*See* Titus Proposed Findings, pp. i (Summary at line 1), ii; Titus Proposed Conclusions ¶ 16). The Commission relies heavily on the truthfulness and candor of its licensees.<sup>11</sup> Mr. Titus's convictions, hearing testimony, lack of cooperation with the police, and his violence toward Halligan call into question his veracity and his respect for authority and, thus, his ability to comply with the Commission's rules and to deal openly and frankly with the Commission. During his oral testimony, Mr. Titus regularly contradicted the evidence and/or his prior testimony, and consistently offered exculpatory explanations about his crimes, often in an effort to rationalize away his criminal behavior. (*See* EB Proposed Findings, ¶¶ 25-28)

21. Mr. Titus's inconsistent testimony during the hearing indicates that he has been less than candid with the Commission during this proceeding. (*See* EB Proposed

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<sup>11</sup> *See Ronald Brasher, et al*, Initial Decision, 10 FCC Rcd 16707, 16745 (2003) ("The bedrock requirement for absolute truth and candor from a Commission licensee or from a license applicant is, simply stated, this agency's quintessential regulatory demand.") citing *California Broadcasting Corporation*, 2 FCC Rcd 4175, 4177 (Rev. Bd. 1987) (italics in original); As the Court of Appeals stated in *WHW Enterprises*, 753 F.2d at 1139 "[A]pplicants before the FCC are held to a high standard of candor and forthrightness. The Commission must license more than 10,000 radio and television stations in the public interest, and therefore relies heavily on the completeness and accuracy of the submissions made to it," citing *RKO General, Inc. v FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 ... (1982). Thus, "applicants ... have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate." *Id.* "Where the submission of false or incomplete and misleading information results from an intent to deceive, the remedy may be total disqualification, even if the facts concealed do not appear to be particularly significant. *Standard Broadcasting, Inc.*, 7 FCC Rcd 8571, 8573-74 (Rev. Bd. 1992); *Contemporary Media*, 13 FCC Rcd at 14,454-59 (1998).

Findings ¶¶ 25-28) He has testified that keeping his amateur license is extremely important to him. (Titus Ex. 1, p. 11; Tr. 1060-64) He also admits intentionally lying to those in authority in crucial situations. (EB Ex. 4, pp. 32-34; Tr. 605)<sup>12</sup> It appears that he has also done so in this one. (See EB Proposed Findings ¶¶ 25-28)

#### **E. Detective Robert Shilling's Risk Assessment Is Based On Experience And Sound Expert Conclusions**

22. Mr. Titus reaches completely unsupported conclusions regarding Detective Shilling's risk assessment. (Titus Proposed Conclusions ¶¶ 6-10) Ignoring the record evidence, Mr. Titus states that Detective Shilling has rated Mr. Titus a Level III sex offender without any rational scientific support. (Titus Proposed Conclusions ¶ 6) To the contrary, Detective Shilling's assessment of the risk Mr. Titus poses to the community is based upon both scientific and analytical data (Tr. 940-43; Titus Ex. 17), as well as the judgment he has gained during almost two decades of managing sex offenders such as Mr. Titus.

23. Police Detective Robert Shilling is the lead detective in the Seattle Police Department's Sexual Assault and Child Abuse Unit/Sex and Kidnapping Offender Detail. (EB Ex. 2, p. 1) On the basis of his experience and impeccable credentials (EB Ex. 3), Detective Shilling testified as an expert in this hearing in the area of community notification, community education, sex offender registration, the management of sex offenders in the community, and in using the Washington Sex Offender Risk Level

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<sup>12</sup> Mr. Titus's criminal record documents his lies to the police detectives investigating his adult crime (EB Ex. 4, pp. 3,13), to the investigating officers in the Mercer Island incident (EB Ex. 4, pp.38-40), and to others holding positions of authority over him. (EB Ex. 4, pp. 43-44)

Classification tool. (Tr. 911-12) As the Bureau explained in its Proposed Findings of Fact and Conclusions of Law, it is hard to overstate the breadth and depth of Detective Shilling's professional and sophisticated hands-on knowledge and "street-smart" intuition regarding the management of sex offenders and their reintegration into communities.

24. Detective Shilling is required by Washington State to use the WASOST, an actuarial model, to assess the risk posed by sex offenders. (EB Ex. 2, p. 6) While he believes there are better tools available, he, nevertheless, believes the WASOST has value as an assessment tool. (Tr. 941-42) In fact, a study introduced by Mr. Titus found that "some elements of the WASOST predict felony sex recidivism with moderate accuracy." (Titus Ex. 17; Tr. 940-41)<sup>13</sup> Detective Shilling also brings to the mix a wealth of experience in evaluating sex offenders; he is the Settle Police department's designated expert for making risk assessments (EB Ex. 2, p 1, EB Ex. 3).<sup>14</sup>

25. Specific examples of the factors considered by Detective Shilling in determining Mr. Titus's risk level include Mr. Titus's multiple sex offenses involving young children (EB Ex. 2, p. 4); that Mr. Titus's record indicates that he might seek out young children (EB Ex. 2, p. 4); Mr. Titus's repeatedly poor treatment history (EB Ex. 2, p. 5, 9); and Mr. Titus's documented history for violence. (EB Ex. 2, pp. 8-9) Detective Shilling has rated Mr. Titus three times since his release from prison and each time Detective Shilling has rated Mr. Titus either a Level II or a Level III sex offender. (EB

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<sup>13</sup> By failing to note the WASOST's usefulness in predicting felony sex recidivism, Titus misstates the study's findings regarding the actuarial model Washington State requires that Detective Shilling use. (Titus Proposed Conclusions ¶ 8, Titus Ex. 17).

<sup>14</sup> Dr. Allmon admits he "is not competent to discuss anything whatever related to actuarials." (Tr. 988) Dr. Allmon agrees with Detective Shilling that judgment, not just numbers, is an important component of any sex offender evaluation. (Tr. 943, 1038)

Ex. 2, pp. 5-8) Either rating indicates that Mr. Titus presents an unacceptable risk to children involved in amateur radio.<sup>15</sup>

26. Although Mr. Titus claims that Detective Shilling is somehow biased against him, (Titus Proposed Conclusions, ¶8) the record evidence belies this assertion. Indeed, the suggestion that Detective Shilling is prejudiced against Mr. Titus and his expert opinions lack credibility is absurd. Detective Shilling is an advocate for helping sex offenders live peaceful and productive lives in the community. He believes that the community should provide the tools necessary to successfully reintroduce sex offenders back into the community. (Tr. 748-49) He helps communities around the nation and around the globe implement the community notification programs necessary to successfully reintegrate sex offenders into communities while simultaneously keeping children safe. (EB Ex. 2, pp. 1-2, Tr. 748-50)

27. Mr. Titus fails to acknowledge Detective Shilling's belief in "risk management." Risk management requires that sex offenders make prudent choices about what activities they engage in and those they avoid in order to minimize their risk of exacerbating their dangerous underlying sexual tendencies. (Tr. 915) Detective Shilling firmly believes that convicted sex offenders should not have close contact with children and should avoid places where contact with youngsters may be made on an anonymous basis. (Tr. 923-24) According to Detective Shilling, ham radio presents the kind of situations that Mr. Titus should avoid. (Tr. 923-24)

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<sup>15</sup> Based on "the totality of the circumstances" which includes the pattern of sex offenses, the pattern of violence, the sex offender treatment summary, Detective Shilling's years of experience and the available results of predictive tests, Detective Shilling firmly believes that Mr. Titus presents a risk to children and is at a high risk to re-offend. (Tr. 941-44)

28. Even if Dr. Allmon testified that Mr. Titus presents a low risk to re-offend,<sup>16</sup> he yet agreed with Detective Shilling when he testified that it would be prudent for sex offenders like Mr. Titus to avoid situations where children are prominent. (Tr. 995-997)

### III. Conclusion

29. In sum, Mr. Titus is a felony sex offender who has repeatedly preyed on children. His string of convictions for felony child sexual offenses and admissions of additional acts of molestation against children prove it. He has not maintained sex offender treatment, and continues to exhibit offense cycle behaviors, including violent behavior. He has not been rehabilitated; and he is engaged in a hobby that gives him easy

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<sup>16</sup> The accuracy of Dr. Allmon's analysis and conclusions is dependent upon the truthfulness and candor of Mr. Titus's responses to Dr. Allmon's inquiries (Tr. 1024) because Dr. Allmon's "findings are based upon Mr. Titus's own statements and the fact that he hasn't been re-arrested." (Tr. 960-61) Although Dr. Allmon testified that Mr. Titus passed the internal truth scale included in the psychological test administered to him (Tr. 961), Dr. Allmon apparently was not convinced that Mr. Titus was responding truthfully and, despite knowing that lie detector tests are scientifically unreliable ("I have very serious questions, as indicated in one of the appendices of this report, including the copy that I have, that says the American Psychological Association members should use the results of polygraph testing with great care and assign much greater weight to tests of honesty that appear in other sources . . ." (Tr. 1025)), felt compelled to re-check Mr. Titus's veracity and his analysis by requiring that Mr. Titus take a short form lie detector test. (Tr. 971) Dr. Allmon's need to rely upon a scientifically unreliable and normally inadmissible lie detector test to check the accuracy of the test results and his analysis raises concerns about the quality and accuracy of his assessment, particularly when it is compared to the assessment of Detective Shilling, and especially with regard to ham radio practices, about which he has no substantive knowledge. (Tr. 988-89) It is worth noting as an example of the misleading nature of the lie detector and truthfulness indices that Dr. Allmon relied upon, that Dr. Allmon believed, because those tests said that Mr. Titus was truthful, that Mr. Titus's actions with the Mercer Island police were appropriate and that the entire event was simply a "misunderstanding." (Tr. 971) But Mr. Titus admitted during the hearing that he was uncooperative with the investigating officers during that incident and that he intentionally lied when responding to their questions..(Tr. 601-02, 605, 608) Also notable is Dr. Allmon's inability, despite being a *specialist* in sexual disorders, to define "pedophile" when asked to do so by the Judge. (Tr. 1041-42)

access to innocent children in situations where he can groom them. Contrary to Mr. Titus's contention, the risk to these children is real. The Commission should not facilitate such risk by continuing to license Mr. Titus. The Commission's character policies provide that any felony conviction is predictive of licensee behavior and is directly relevant to the functioning of the Commission's regulatory mission.<sup>17</sup> Mr. Titus's egregious convictions, erratic recent behavior, and required registration as a sex offender support the finding that Mr. Titus does not possess the requisite qualifications to be and to remain a Commission licensee.<sup>18</sup>

30. As carefully delineated in the Bureau's Proposed Findings of Fact and Conclusions of Law, and based on the totality of the evidence, the Bureau urges the Presiding Judge to find that Mr. Titus is not qualified to be or remain a Commission

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<sup>17</sup> See *Lonnie L. Keeney*, Order of Revocation, 24 FCC Rcd 2426 (Enf. Bur. 2009) (“*Keeney*”) (The Commission considers relevant “evidence of any conviction for misconduct constituting a felony” and has stated “there may be circumstances in which an applicant has engaged in non-broadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation . . . . Such misconduct might, of its own nature, constitute prima facie evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee . . . .” “Because all felonies are serious crimes, any conviction provides an indication of an applicant's or licensee's propensity to obey the law” and to conform to provisions of both the Act and the agency's rules and policies. A felony conviction for child molestation is a very serious crime which shocks the conscience. See *Robert D. Landis*, Order of Revocation, 22 FCC Rcd 19979 (Enf. Bur. 2007); *Jack R. Sharples*; Hearing Designation Order, 22 FCC Rcd 9381 (2007) (application subsequently withdrawn and hearing terminated by FCC 07M-27); *Contemporary Media Inc. v FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000), cert. denied, 532 U.S. 920 (2001) (in affirming character policy of considering felonious misconduct, stating that policy seems particularly reasonable as applied to “such patently criminal behavior as sexual assault on children”).

<sup>18</sup> “[C]ontinued treatment by law enforcement as a sex offender demonstrates that he has not been sufficiently rehabilitated to mitigate his past misconduct.” *Keeney* 24 FCC Rcd 2429, ¶8 (citing 1990 *Character Order*, 5 FCC Rcd 3252, ¶4).

licensee and that, as a consequence, his captioned amateur radio license should be revoked.

Respectfully submitted,

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April 30, 2009

**CERTIFICATE OF SERVICE**

Rebecca Lockhart, a Paralegal Specialist in the Investigations and Hearings Division of the Enforcement Bureau, Federal Communications Commission, certifies that she has, on this 30<sup>th</sup> day of April 2009, sent by first class United States mail a copy of the foregoing "Enforcement Bureau's Reply to David L. Titus's Proposed Findings of Fact and Conclusions of Law" to:

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and has hand-delivered a copy of same to:

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Rebecca Lockhart